In the Application of:	) **Electronically Filed on March 24, 2008**
	)
Martin Lund	)
	)
Serial No. 10/665,648	)
	)
Filed: September 19, 2003	)
	)
For: METHOD AND SYSTEM TO	)
PROVIDE BLADE SERVER LOAD	)
BALANCING USING SPARE LINK	)
BANDWIDTH	)
	)
Examiner: Man U Phan	)
	)
Group Art Unit: 2619	)
	)
Confirmation No. 6075	)
	)

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

    The Applicant requests review of the final rejection in the above-identified application, stated in the final Office Action mailed on November 23, 2007 (hereinafter, the Final Office Action) with a period of reply through March 24, 2008, pursuant to the attached request for one-month extension. The Applicant also requests review of the arguments stated on page 2 of the Advisory Office Action mailed on March 11, 2008 (hereinafter, the Advisory Office Action). No amendments are being filed with this request. This request is being filed with a Notice of Appeal. The review is being requested for the reasons stated on the attached sheets.

<div align="center">**REMARKS**</div>

The present application includes pending claims 1-25, all of which have been rejected. Claims 1-25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Romero U.S. Pub. No. 2004/0054780 (hereinafter, Romero), in view of Garnett et al. US Patent No. 7,032,037 (hereinafter, Garnett). The Applicant respectfully submits that the claims define patentable subject matter. The Applicant also respectfully traverses these rejections at least for the following reasons:

I.   "Response to Examiner's Arguments" in the Final Office Action and in the Advisory Office Action:

In the Final Office Action at pages 3-4 and 5, the Examiner states that the Applicant intends broad interpretation be given to the claims and the Examiner has interpreted the claims in parallel to the Applicant in the response and reiterates the need for the Applicant to distinctly define the claimed invention. However, the Examiner has been unable in the first Office Action, in the Final Office Action and again in the Advisory Action to articulate support in Romero or Garnett for the limitation "**receiving capacity utilization information embedded in spare link bandwidth from a plurality of blade servers…,**" as recited by the Applicant in claims 1 and 13.

Specifically, in the Examiner's "Response to Arguments" in the Final Office Action, the Applicant points out that Applicant's claims are sufficiently distinguishable over both Romero and Garnett. For example, **neither Romero nor Garnett disclose any use of capacity utilization information. In addition, neither Romero nor Garnett disclose any use of capacity utilization information that is *embedded in the spare link bandwidth* from a plurality of blade servers.** As these are very specific claim limitations, which the Examiner has failed to find support for in the references, the Applicant submits that the references have been sufficiently distinguished. The Examiner is referred to MPEP 2142, which states that the prior art references must teach **all** of the Applicant's claim limitations in order to support a §103 rejection. Since neither Romero nor Garnett disclose any use of capacity utilization information that is embedded in the spare link bandwidth from a plurality of blade servers, the Applicant is puzzled as to why the Examiner has repeatedly stated that the Applicant should significantly amend the claims and "distinctly define" the invention. The Examiner is urged to re-read the specification, including the figures and the claims, as the Applicant's invention is distinctly defined and no further amendments are required in light of the references.

In the "Response to Arguments" section of the Final Office Action as well as in the main argument, the Examiner has provided extensive description of what a "blade server" is. The Examiner has also inferred that load balancing is a feature that is known in the art and is widely associated with blade servers and, somehow, a server management module is "configured to perform central management functions for the entire cluster of blade servers." *See* the Final Office Action at pages 4-5 and 8-9.

While the Applicant appreciates the information on blade servers, the Applicant fails to see its relevance. As already stated above, the Applicant has pointed out to very

specific features recited in Applicant's claims, which are not supported by either Romero or Garnett (the Examiner is referred to a more detailed discussion as to the deficiencies of Romero and Garnett below). With regard to the suggestion that load balancing is known in the art and widely associated with blade servers, the Applicant will point out that **the Examiner's own and thorough search of the prior art has demonstrated the contrary. Namely, the Examiner has conceded that the Romero reference does not disclose blade server load balancing functions. The Applicant would like to reiterate that the issue is not whether or not Romero or Garnett discloses blade server load balancing functions. Rather, the issue is _how_ blade server load balancing is performed. Applicant's claims 1 and 13 are very specific and disclose that load balancing uses capacity utilization data that is embedded in spare link bandwidth. Again, the Examiner is reminded that at least this specific feature is not present in any of the references.**

In the Advisory Action, the Examiner continued to argue that Romero's flow chart in Fig. 4 illustrates a process for supporting load balancing at the blade level. However, the Examiner has not responded to the Applicant's request to identify where Garnett or Romero discloses the limitation "**receiving capacity utilization information embedded in spare link bandwidth from a plurality of blade servers…**," as recited by the Applicant in claims 1 and 13. The Examiner is further referred to (MPEP) § 2106(II) that states "… **Office personnel _should_ state _all_ reasons and basis for rejecting claims in the _first_ Office action…**" Therefore, based on the lack of basis to show support to reject the claim limitation in the independent claims 1 and 13, a prima facie case of obviousness has not been established and the Applicant respectfully request that the rejection of claims 1-25 under 35 U.S.C. § 103(a) be withdrawn.

II.   Rejection of Claims 1-25 under 35 U.S.C. § 103(a)

The Applicant first turns to the rejection of claims 1-25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Romero in view of Garnett.

A.   The Combination of Romero and Garnett Does Not Disclose or Suggest the Limitations of Claims 1-25

The Applicant turns to the rejection of claims 1-25 under 35 U.S.C. § 103(a) as being unpatentable over Romero (U.S. Pub. No. 2004/0054780) in view of Garnett (U.S. Patent No. 7,032,037).

A(1). Arguments to Rejections of Claims 1 and 13

With regard to the rejection of independent claim 13 under 103(a), the Applicant submits that the combination of Romero and Garnett does not disclose or suggest at least the limitations of "wherein said blade server manager allocates data received from said external network to each blade server based on embedded capacity utilization data transmitted by each blade server to the blade server manager that is embedded in

spare link bandwidth on said interface between the blade server manager and each of said blade servers," as recited by the Applicant in independent claim 13.

With respect to claims 13-15 and 23, the Examiner concedes that "Romero does not expressly disclose the capability to perform blade server load balancing functions." See the Final Office Action at page 8. The Examiner then seeks support in Garnett and states the following:

> "In the same field of endeavor, Garnett et al. (US#7,032,037) provide a server blade comprising at least one processor and at least one communications port. The communications port may be operable to receive an information message and the processor may be operable to compare the received information message to a predetermined set of possible destinations to select a destination. The communications port may be further operable to transmit the information message to the selected destination. The server blade can be configured as a field replaceable unit. This arrangement provides a load balancer module configured to take the place of a standard server blade within a modular computer system to provide a load balancing service to that modular computer system (See Figs. 1 & 15; Col. 2, lines 5 plus)."

See the Final Office Action at page 8. The Applicant points out that Garnett provides a modular computer system with integral load balancing service. See Garnett at col. 1, lines 63-65. Garnett also discloses a load balancer module configured to take the place of a standard server blade within a modular computer system to provide a load balancing service to that modular computer system. See id. at col. 2, lines 8-11. However Garnett, including FIGS. 1 and 15 and col. 2, lines 5 plus), does not disclose or suggest any use of capacity utilization information. In fact, Garnett also does not disclose or suggest any use of capacity utilization information that is embedded in the spare link bandwidth from a plurality of blade servers. The Applicant also points out for the record that **the Examiner has not identified where Garnett (or Romero) discloses the use of capacity utilization information that is embedded in the spare link bandwidth between a blade server and a blade server manager**.

With regard to the "information message" stated in the Examiner's argument above, the Applicant points out that Garnett only discloses that the information message is used by the processor to compare the message to a predetermined set of possible destinations to select a destination. Again, there is no further disclosure in Garnett that the "information message" reads on capacity utilization information that is embedded in the spare link bandwidth.

Romero does not overcome the deficiencies of Garnett. Therefore, the Applicant maintains that the combination of Romero and Garnett does not disclose or suggest at least the limitations of "wherein said blade server manager allocates data received from said external network to each blade server based on embedded capacity utilization data transmitted by each blade server to the blade server manager that is embedded in spare link bandwidth on said interface between the blade server manager and each of said blade servers," as recited by the Applicant in independent claim 13. Accordingly, the Applicant submits that the combination of Romero and Garnett does not establish a prima facie obviousness rejection to independent claim 13 and the Applicant respectfully request that the rejection of independent claim 13 under 35 USC 103(a) be withdrawn. Claim 1 is similar in many respects to the system of claim 13. Therefore, the Applicant submits that claim 1 is allowable at least based on the above reasons.

Furthermore, the Applicant reserves the right to argue additional reasons beyond those set forth herein to support the allowability of claims 1 and 13 should such a need arise.

A(2). Arguments to Rejections to Claims 2-12, and 14-25

The Applicant maintains the arguments for dependent claims 2-12, and 14-25 in the reply to the final Office Action dated November 23, 2007.

III. Conclusion

The Applicant respectfully submits that claims 1-25 of the present application should be in condition for allowance at least for the reasons discussed above and request that the outstanding rejections be reconsidered and withdrawn. The Commissioner is authorized to charge any necessary fees or credit any overpayment to the Deposit Account of McAndrews, Held & Malloy, Ltd., Account No. 13-0017.

Respectfully submitted,

Date: March 24, 2008

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